

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-1579

Application of Vermont Community Solar, LLC)
for a certificate of public good for an)
interconnected group net-metered photovoltaic)
electric power system)

Order entered: 11/14/2011

I. INTRODUCTION

This case involves an application filed by Vermont Community Solar, LLC ("Applicant") on July 20, 2011, requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. §§ 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100 for a net metering system. The net metering system is a group system that utilizes a photovoltaic system and includes two electric meters.

Notice of the application in this docket was sent to all parties as specified in the Board's Rule 5.100. The notice stated that any party wishing to submit comments or request a hearing in this matter needed to file comments with the Board within thirty (30) days of the date that the notice of the application was sent.

On August 4, 2011, adjoining landowners Gary L. and Alice E. Cobb (the "Cobbs") filed comments on the proposed project.

On September 1, 2011, the Applicant filed a response to the Cobbs' comments.

On September 26, 2011, the Clerk of the Board issued a memorandum requesting additional information from the Applicant.

On October 27, 2011, the Applicant filed a response to the September 26 memorandum.

No other comments have been received.

The Board has reviewed the application and accompanying documents and agrees that, pursuant to 30 V.S.A. §§ 219a and 248 and the Board's Rule 5.100, a CPG should be issued without further investigation or hearing.

II. FINDINGS

Based upon the application and its accompanying documents, the Board makes the following findings in this matter.

1. The proposed group net metering project will be located on property owned by Robert Dukeshire at 4304 U.S. Route 5 in Westminster, Vermont. Application at Section 1.
2. The proposed net metering facility is to be erected on a new structure. Application at Section 4.
3. The proposed group system consists of a photovoltaic system with a total system-rated power output of 142.272 kW AC. The facility will be interconnected with the Green Mountain Power Corporation electrical distribution system. Application at Section 4 and attachments.
4. Applicant has specified the two meters to be included in the group system by account number and location. Applicant has also provided a method for adding or removing meters included in the group system. Application at Section 7 and attachments.
5. Applicant has designated Peter Thurrell as the person responsible for receiving all communications regarding the group system. Application at Section 7 and attachment.
6. All disputes among users of the group system shall be resolved by the Applicant. Application at Section 7 and attachment.
7. Applicant has certified that the project is in compliance with all of the provisions of Sections 3 and 8 of the application. Based on these submissions, we conclude that the project does not raise a significant issue with respect to the environmental criteria of 30 V.S.A. § 248. Application at Sections 3 and 8 and Attachments.
8. Applicant has certified compliance with the insurance requirements as set forth in Section 3 of the application. Application at Section 3.

III. DISCUSSION AND CONCLUSION

Adjoining Landowner Comments

The Cobbs state that they have not agreed to the siting of the proposed project for several reasons. The Cobbs assert that a proper survey of the subject property has not been conducted, and the Cobbs request that the property be surveyed by a professional surveyor to establish

boundary lines. The Cobbs request that, if the Board grants a permit to the Applicant, that the permit include a condition that the project be sited at least 25 feet from the property lines.

The Cobbs represent that the subject property contains a 10-foot right-of-way that abuts their property, and that this right-of-way has also not been surveyed. The Cobbs request that the right-of-way be surveyed. The Cobbs state that their understanding of the right-of-way is that it is meant to be used primarily for agricultural use. The Cobbs are opposed to the right-of-way being used for access to the project site. The Cobbs represent that their septic system and leach field are a few feet away from the right-of-way and that their septic system, leach field and heating system were damaged years ago when the topsoil was removed from the subject property by large trucks. The Cobbs are concerned that construction of the proposed project using the right-of-way may cause similar damage.

The Cobbs state that the subject property is located in the flood hazard overlay district. The Cobbs ponder who will be responsible for cleanup in the event that the property is flooded, and whether the lessee will be required to purchase flood insurance.

The Cobbs rebut an assertion in Section 8 of the application that the subject property has low potential for agricultural use. The Cobbs assert that the property is part of an agricultural overlay district, and that the field regularly produces two crops of hay a year, and that the field is regularly fertilized.

Finally, the Cobbs state concern about their property value and their way of life. The Cobbs state that they could not find evidence regarding property-value effects of such projects, and that because projects of this type are new that their effects have yet to be determined. The Cobbs wish to maintain their "country place where country living happens daily". The Cobbs respectfully request a hearing if one is required to hear their concerns.

Applicant's Response to Comments

The Applicant responded to each of the Cobbs' arguments in order. The Applicant proposes to conduct a survey of the property boundary prior to commencing installation of the proposed project. However, the Applicant asserts that property-line setback requirements are set by the Town of Westminster and are not subject to Board jurisdiction.

The Applicant states that the property deed contains no use restrictions on the right-of-way, and that the right-of-way will be used solely to bring construction materials to the site and to perform inspections and maintenance.

The Applicant stipulates that in the event that damage occurs to the Cobb's property as a result of the proposed project, the Applicant will remedy that damage.

The Applicant states that the Town of Westminster Selectboard and Planning Commission is believed to have reviewed the issues related to flooding, and that the Town has no objection to the proposed project.

The Applicant represents that only hay can grow in the subject field, and in light of the expected financial returns of the proposed project, that no argument can be made that growing hay is the highest and best use of the land.

The Applicant states that an objection absent substantiated evidence regarding property-value impacts is not valid.

The Applicant states that the closest part of the project to the Cobbs' house will be at a distance of 325 feet, with barns and outbuildings in between the project and the Cobb residence that render the project nearly impossible to see. While the Applicant does not believe that the project will have an adverse affect on the aesthetics of the surrounding area, the Applicant is willing to provide the Cobbs with bushes to plant along the Cobbs' back fence line to reduce visibility.

Finally, the Applicant states that the Cobbs' country living includes the use of electricity, and frames the matter in terms of whether such electricity ought to be generated locally by earth-friendly processes or at greater distances by earth-damaging processes.

Discussion

In response to the Cobbs' concern that the subject property has not been properly surveyed, the Applicant has agreed to have the property surveyed prior to commencing construction. Accordingly, we condition issuance of this CPG upon the Applicant having the subject property surveyed by a professional surveyor prior to commencing construction of the proposed project.

In response to the Cobbs' request that the Board require the solar panels to be set back 25 feet from the surveyed property lines, the Applicant states that setback requirements are established by the Town of Westminster and are outside of the Board's jurisdiction. Under state statute, this project is under the jurisdiction of the Board, not the Town, and therefore it is within the Board's authority to establish a setback requirement for the project. However, in this case, the Cobbs have not provided a basis for their requested 25-foot setback condition.

Because there has been no demonstration that absent this condition the proposed project would fail to satisfy one or more of the criteria of 30 V.S.A. § 248, we decline to grant the Cobbs' request.

In response to the Cobbs' concern that construction of the proposed project, including use of the deeded right-of-way, may cause damage to their property, the Applicant has agreed to remedy any damage. Therefore, we condition issuance of this CPG upon the Applicant bearing the responsibility to remedy any damage to the Cobbs' property as a result of construction of the proposed project.

With respect to the Cobbs' concerns regarding restrictions in the use of the deeded right-of-way, the Board's jurisdiction in this proceeding is limited to review of the proposed project under the relevant Section 248 criteria. It is the responsibility of the Applicant to ensure that it has all necessary property rights for construction and operation of the project, and any property-rights disputes are a matter for civil courts, not this Board. However, we encourage the Applicant to act in good faith regarding reasonable use of the right-of-way related to this project, such as limiting heavy traffic to normal business hours.

With regard to the proposed project potentially being located within a floodplain, the Applicant has asserted in Section 8 of the application that the proposed project will not be located on, near, or within a floodway, and no party has presented evidence to the contrary. Further, in Section 3 of the application, the Applicant has attested that the project is in compliance with all applicable state and federal requirements and has the necessary approvals for operation of this type of system.

Finally, regarding the Cobbs' concerns about the proposed project potentially impacting their country living, we note that the Cobbs have not indicated in what way(s) the proposed project may impact their country living. Board Rule 5.109(A) provides that the Board may hold a hearing for a net metering system when it determines that the system raises a substantive issue with respect to one or more of the criteria of 30 V.S.A. § 248. Pursuant to the Board's Order of April 19, 1999, in PSB Docket No. 6181, *"Investigation into the Use of a Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies,"* parties with objections or concerns must make a showing that the application raises a significant issue with respect to one or more substantive criteria applicable to the proposed net metering system. Accordingly, the Net Metering Application Form states that

persons requesting a hearing regarding a net metering project "must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed net metering system."¹

Pursuant to 3 V.S.A. § 811, the Board has read the record, including correspondence from the Cobbs, and we conclude that the neighboring landowners have not shown that the project raises a significant issue with respect to the applicable criteria. Therefore, a hearing in this case will not be held. The Applicant has offered to provide vegetative screening to the Cobbs to further reduce any potential views of the project. We condition issuance of this CPG upon the Applicant providing appropriate vegetative screening to the Cobbs.

In Docket No. 6181,² the Board developed a net metering program in accordance with the statutory requirements of 30 V.S.A. § 219a. This program was further refined by the Board with the adoption of Board Rule 5.100. The goals of the Order and Rule are to encourage private investment in renewable energy resources, stimulate the economic growth of the state and enhance the continued diversification of energy sources used in Vermont. The standards and requirements adopted in the Order and Rule have been determined by the Board to protect public safety and system reliability.

Based upon the findings and evidence, the proposed net metering project will be in compliance with the requirements of the Board's Order in Docket No. 6181 and Rule 5.100, the application does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, and the proposed project will promote the general good of the state.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the group net metering system, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 219a, and a certificate of public good to that effect shall be issued in this matter, pursuant to 30 V.S.A. §§ 219a and 248, subject to the following conditions:

1. State of Vermont Public Service Board Application for a Certificate of Public Good for Interconnected Net Metered Power Systems, at 1. As noted above, the adjoining landowners and other entities specified in Board Rule 5.100 received a copy of the application form for the project before us.

2. *Investigation into the Use of A Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies*, Docket No. 6181, April 21, 1999.

1. Vermont Community Solar, LLC shall commission a professional survey of the land proposed to host the photovoltaic array prior to commencement of construction.
2. Vermont Community Solar, LLC shall assume responsibility for any damage to neighboring property that results from the construction of the project.
3. Vermont Community Solar, LLC shall provide appropriate vegetative screening to reduce the visibility of the project from the adjacent property of Gary and Alice Cobb.

DATED at Montpelier, Vermont, this 14th day of November, 2011.

<u>s/ James Volz</u>)	
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<u>s/ David C. Coen</u>)	PUBLIC SERVICE
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<u>s/ John D. Burke</u>)	BOARD
)	
)	OF VERMONT

OFFICE OF THE CLERK

Filed: November 14, 2011

Attest: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.